IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.218 OF 2004

Amita Hemant Shah .. Petitioner
V/s
The Assistant Commissioner of
Sales Tax & Anr. .. Respondents

Ms.Anita D.Borkar for the Petitioner.
Mr.G.W.Mattos, AGP for the Respondents.

CORAM: F.I.REBELLO, &
S.P.KUKDAY, JJ.

DATE : 06.04.2005.

P.C.:

1. Rule. Heard forthwith.

2. The present petition by the petitioners was to challenge the action of the Respondents purporting to auction the tenancy right of M/s.Creative Motors in the premises, which right was created by the petitioners as proprietors of M/s.Creative Enterprises. On behalf of the Respondents, the learned AGP, on instructions, makes a statement that in so far as order dated 8.11.2001 the same has been withdrawn and there is no demand against the petitioner. The relief as sought for, still survives even if the prohibited order dated 8.11.2001 is withdrawn. From the records and documents filed with the petition, it appears that the partners of M/s.Creative Motors were also initially the partners of the petitioner. Thereafter consequent on change in the constitution of the partnership, the petitioner's husband and daughter who were partners have retired from

the partnership. In otherwords, the husband and the daughter have no longer a right in the property in terms of the documents filed before this Court. The demand is against M/s.Creative Motors and not against M/s.Creative Enterprises - the proprietory concern. Considering that, in our opinion, the assets of the petitioner based on the documents as now available, would not be sold for the dues of M/s.Creative Motors. In the light of that, it will not be open to the Respondents to auction the property of the petitioner and to that extent the petition will have to be made absolute in terms of prayer clause (a), based on the documentary evidence as now available. Petition stands disposed of accordingly. The petitioners are discharged from the undertaking dated 4.12.2002.

(F.I.REBELLO, J.)

(S.P.KUKDAY, J.)